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ABDUCTING, KIDNAPPING, OR AIDING IN THE ESCAPE OF AN INMATE OF A HOSPITAL FOR THE INSANE.

The writer has recently had occasion to examine the law pertaining to this subject, and is surprised to find that there is no statute in Virginia bearing directly thereon.

The Legislature (Acts, 1885-86, page 418), has wisely added to the statute on the subject of rape so as to include female inmates of any lunatic asylum. And now under Section 3680, Code, 1904, "Any female who is an inmate of a deaf, dumb, or blind institution" is included.

The same motive which prompted this legislation for the protection of female inmates of such institutions from becoming victims of such crime, upon the broad theory that they are *non compos mentis*, it would seem, would justify the Legislature in so amending the law relative to abducting or kidnapping. There are only two sections of the Code that bear at all upon this subject, found in Sections 3678 and 3713, Code of 1904.

Section 3678 provides that: "If any person take away or detain, against her will, any female with intention to marry or defile her * * * he shall be confined in the penitentiary not less than three years nor more than ten years; and every person who shall assist or aid any such abduction or detention for such purpose, shall be guilty of a felony, and shall, upon conviction, thereof, be punished by confinement in the penitentiary not less than two years nor more than five years."

While Section 3713 provides that: "If any person other than the father or mother of a child, illegally seize, take or secrete a child from the person having legal charge of such child, he shall be confined in the penitentiary not less than two years nor more than five years, or in the discretion of the jury, in jail not exceeding one year, and fined not exceeding one thousand (\$1,000) dollars."

We maintain that under Section 3678, *supra*, if the circumstances, the acts of the accused, or the evidence were sufficient to show that a female lunatic was taken away or detained with intent to commit such acts as are contemplated by the statute, that

upon the proper construction of such statute the law would imply that the taking was against her will, "she having no will and not being able to give any consent," but this should be put at rest by express statute.

"The abduction of a female was an offense at common law, when the abduction or detention was against the female's will, but it seems to have been only a misdemeanor when not accompanied by rape or other violence." Minor's Synopsis of the Laws of Crime and Punishments, page 70. See Anderson's Case, 5 Randolph 628; 1st. Cyc. 144.

It is true that in the particular case that came under my observation, I took the position, and still maintain it, that as the female lunatic who had been aided in her escape from one of the hospitals for the insane of this State, was under twenty-one years of age, that the provisions of Section 3713, *supra*, were applicable.

The word "child" as used in this statute, we maintain, means a person under *lawful age* as distinguished from adults, there being only three classes of persons as used in that sense, viz.: men, women and children. 7th. Cyc., pages 123, 124; Black's Law Dictionary; Words and Phrases, vol. 2, page 1115.

But regardless of the intent on the part of any accused, and regardless of the age or sex of the inmate of such institution, the Legislature has provided against the escape of all criminals of every class, has imposed heavy punishment upon any person aiding in the escape of almost every person in custody except lunatics. Sections 3751, 3752, 3753, seem very broad in their application, but do not apply to insane hospitals, for these institutions cannot be regarded as prisons in any sense of the word. They are created and maintained, not for persons convicted, or suspected of crime, but for the poor unfortunates of our State.

Section 4173d (subsection 4) is intended to prevent the escape of minors in the custody of the Prison Association of Virginia, while Section 4173e (subsection 9) provides against the aiding in the escape of minors in the custody of The Negro Reformatory Association, and notwithstanding the fact that there are now two thousand, seven hundred and ninety inmates of the four hospitals for the insane in this State, there seems to be no statute

imposing any punishment whatever upon those aiding these unfortunates and oftentimes dangerous people to escape.

It is generally conceded that the attendants and employees at these institutions are poorly paid. They are not officers, but simply employees; they do not qualify and give bond as the officers of the other institutions in this State do, and suppose some indiscreet or resentful attendant, should, by his or her carelessness, or even in a spirit of revenge, allow any number of the patients under his or her care to escape, there is nothing that could be done to punish the guilty party for such conduct, except perhaps for the superintendent of such hospital to discharge said attendant or employee, which would be no punishment at all, and certainly in no way correct the great dangerous results which might accrue to such patients as well as to the public. On the other hand some indiscreet, wicked or malicious person could induce one or more of these lunatics—many of whom are permitted at times to go at large—to go off with him without any special intention of marrying or defiling her, or even perchance it might be a male patient, and it would seem that the law should provide some degree of punishment for such persons. If it is a crime to kidnap or abduct one's child who, in law, has no will, and therefore can give no consent, it ought to be a crime to subject one's father or mother, or brother or sister to such dangers to self and to the public when he or she are *non compos mentis*.

If it is a crime to aid in the escape or to allow sane persons in custody to go at large, is it not a much greater crime to aid such insane persons to escape, and much more dangerous for them to go at large?

I trust that the members of the Bar, and especially those who are members of the General Assembly, will take these matters under consideration, and if these crude suggestions, hurriedly gotten up, shall even indirectly aid in bringing about the proper legislation, which seems to be an omission from our Criminal Jurisprudence, the writer shall be more than gratified. The purpose of this article is only to make a suggestion, and it is earnestly hoped that other members of the Bar will express themselves through the valuable columns of the REGISTER.

NORVELLE L. HENLEY.

Williamsburg, Virginia, May 22, 1907.